Order

Michigan Supreme Court
Lansing, Michigan

May 2, 2025

167825 & (57)

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

In re T. HEWITT, Minor.

SC: 167825
COA: 368861
St Joseph CC Family Division:
2022-000699-NA

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By order of January 17, 2025, the petitioner Department of Health and Human Services was directed, and the child's lawyer-guardian ad litem was invited, to answer the application for leave to appeal the October 23, 2024 judgment of the Court of Appeals. On order of the Court, the answers having been received, the application for leave to appeal is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion to appoint counsel is DENIED.

THOMAS, J. (*dissenting*).

I respectfully dissent from the Court's order denying leave to appeal and denying the motion to appoint counsel.

During the adjudicative phase of a child protective proceeding matter, such as this one, the trial court determines whether it has authority to exercise jurisdiction over a child. *In re Sanders*, 495 Mich 394, 404 (2014). Either DHHS must prove sufficient allegations at trial to warrant jurisdiction, or the respondent may enter a plea of no contest or admit to allegations. MCR 3.971(A); MCR 3.972; *In re Ferranti*, 504 Mich 1, 15 (2019). For a plea to establish jurisdiction and waive inherent parental rights, any respondent-parent's plea must be "knowingly, understandingly, and voluntarily made." MCR 3.971(D)(1); see also *In re Ferranti*, 504 Mich at 21.[1] MCR 3.971(B) requires the court to advise respondent-parent on the record, or in writing, of their right to an attorney, the rights they waive by entering a plea, the consequences of the plea, potential posttermination support obligations, and the availability of appellate review. *In re Ferranti*, 504 Mich at 21. In

[1] The court must also establish the accuracy of the plea. See MCR 3.971(D)(2) ("Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent . . . .").

this case, respondent-mother (hereinafter respondent) did not preserve any error, so appellate courts review whether there is plain error that affected her substantial rights and seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 29.

I agree with Judge HOOD's dissent in the Court of Appeals that the record provided in this case raises significant concerns about the knowing, understanding, and voluntary nature of respondent's plea given the confluence of respondent's stated confusion about the plea, the impact of underlying intimate-partner violence alleged in this case, and the lack of an adequate record of the lower court proceedings.

Respondent gave birth to TH in January 2022. In June 2022, the police were dispatched to the home of respondent and respondent-father, Trevor Hewitt, for an incident that resulted in Hewitt's being charged with domestic violence. Allegedly, respondent had broken windows in the home and chased Hewitt, including with a broom, and Hewitt had thrown a metal figurine at respondent's head and swung a propane torch at her while she was holding TH. DHHS became involved and respondent was offered services through the state's Family First program, but she was discharged when she, according to DHHS, "failed to address the domestic violence and continued to have contact with respondent-father." In September 2022, DHHS petitioned the trial court to exercise jurisdiction over the child under MCL 712A.2(b)(2), because of an unfit home or environment.

At the pretrial hearing on September 29, 2022, both respondent and Hewitt were present before the court. Respondent's attorney stated that she was "prepared to make an admission to ongoing domestic violence exposure."

The transcript of the proceeding is incomplete,[2] and what it did record revealed that at least two times, respondent indicated that she did not understand the proceedings. It also shows that Hewitt significantly interrupted the proceedings and tried to speak for respondent. Further, respondent's answers to important questions about her understanding were not recorded:

> *The Court*: All right. So you understand if I—if you make an admission today you give up the right to a trial on the allegations and all trial rights, those being a trial by judge, jury, or referee. Okay. You have the

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[2] The Court of Appeals diligently took the step of also listening to the proceedings to try to determine what was said, but it could not further clarify. See *In re T Hewitt*, unpublished per curiam opinion of the Court of Appeals, issued October 23, 2024 (Docket No. 368861), p 3 ("In numerous instances respondent-mother's responses are noted as inaudible . . . . [T]his Court sua sponte requested the audio recordings of the plea hearing. Review of the audio recordings of the transcript did not remedy the deficiencies in the record.").

> right—and they also have a right to have the Prosecutor here prove those allegations by a preponderance of the evidence. All right. You also have a right to testify, to have witnesses testify for you and to have witnesses subpoenaed here to come to court. Okay. And lastly, to have your attorney cross-examine any of the state's witnesses. Okay. You understand that?
>
> *The Respondent*: Yes.
>
> *The Court*: All right. Has anybody promised you anything or is anybody pressuring you into an admission today?
>
> *The Respondent*: (inaudible)

The court then asked respondent whether she was under the influence of drugs or alcohol and stated that the court would "assume jurisdiction for [her] and [her] child" if an admission was made, that orders would be entered stating what she had to do to get her child back as part of a case service plan, and that she would have to follow these orders. The court also said the "the worst-case scenario" that children would not be returned was possible, though no one wanted that to happen.

The transcript then reflects the following exchange:

> *The Court*: And so anything you say when you enter your admission today can be used against you on a future termination of your parental rights. Okay. You understand that?
>
> *The Respondent*: (inaudible)
>
> *The Court*: Knowing all that I've explained to you today, are you wanting to make an admission today?
>
> *The Respondent*: I don't understand.
>
> [*Hewitt*]: No, she doesn't understand, your Honor. Can I speak please?"

A four-minute recess was taken for respondent to speak with counsel, then the hearing continued.

> *The Court*: Okay, we're going to go back on the record . . . . We were in the middle of giving Mother her—her rights as to trials and what could happen, and she requested some time to speak with her attorney and so we are back and I'll go to her attorney as to—is there a resolution today.

Mr. Nofsinger [respondent's trial counsel]: Yes, your Honor. We had a chance to—Carlee had some questions. We discussed (inaudible) an admission. We want to make an admission.

The Court: Okay. All right. Is that true, Mom.

The Respondent: (inaudible)

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The Court: Okay, you're still under oath. I did put you under oath prior and do you understand—anything I need to explain to you or that I just—just went over with you that you—

The Respondent: (inaudible)

The Court: Well, I want to reiterate. You'll have a case plan after today that you'll need to follow, and we will have Ms. Borden come up and she will explain what she's expecting to be done, okay. And I think you already know the majority of what needs to probably be done, so, um, and so the main thing is you need to understand that when you enter your admission today it could be used you [sic] on a future termination of your parental rights. We're not saying that's going to happen, but you just need to know that. Okay.

The Respondent: (inaudible)

The Court: And you need—maybe a little bit—put the mic a little bit closer because I don't know if we're picking up enough.

The Respondent: (inaudible)

The Court: All right. Okay. So, at this point I'm going to turn it over to your attorney as to the admission, okay. He's going to ask you some questions.

Mr. Nofsinger: Thank you, your Honor, Carlee talked about the exposure to domestic violence and (inaudible) to domestic violence.

The Respondent: (inaudible)

Respondent admitted that TH had been exposed to domestic violence, contrary to the child's welfare. Then the court expressed concerns about respondent's admission that had just been given:

> *The Court*: Well, the issue is your demeanor is not really giving any confidence to this Court as to—as to your admission, um, is this truly your—your admission, you're willing and wanting to do, take—give this admission today.
>
> *The Respondent*: I don't really understand what admission means. I mean it's like—I don't understand. He explained to me what I have to do and (inaudible) and that's fine. If that's what you're asking me, yes.
>
> [*Hewitt*]: You're admitting to endangering our son. You're admitting—
>
> *Mr. Robare* [representing DHHS]: Could we take a time—
>
> *The Court*: Yes, we need to take a time out.

After the time-out and another outburst by Hewitt that resulted in his removal from the courtroom, the court accepted the plea and advised respondent of her appellate rights before concluding the hearing.

The court indisputably did not advise respondent of her appellate rights before the plea as required by MCR 3.971(B)(6), perhaps because of the stress caused by Hewitt's outbursts and ultimately his forced removal. The court also did not repeat, for the record, the allegations to which respondent-mother was admitting pursuant to MCR 3.971(B)(1). Failure to properly advise a respondent of her rights renders a plea or admission "fatally defective." *In re SLH*, 277 Mich App 662, 672 (2008).

There were no facts provided at the plea hearing regarding who the victim or perpetrator of the domestic violence was. As the Court of Appeals has cautioned, being a victim of intimate-partner violence standing alone is not a ground for the termination of parental rights. *In re Jackisch/Stamm-Jackisch*, 340 Mich App 326, 334 (2022); *In re Plump*, 294 Mich App 270, 273 (2011) (stating that it is impermissible to terminate a respondent's parental rights "solely because he or she was a victim of domestic violence," but that termination is permissible when a "respondent's own behaviors were directly harming the children or exposing them to harm"). On this record, it is possible that respondent admitted only that both she and the child were endangered by Hewitt's acts of domestic violence, which, if so, would not provide a sufficient factual basis to support her plea. *Id*. While it is possible that additional answers might have established further facts, they were not preserved in the record and cannot be assumed to exist by this Court.

What is also shown from the September 29, 2022 hearing transcript is that Hewitt, respondent-father, was present in the courtroom and frequently interjected during the proceeding, including during respondent's testimony. Assistant Prosecuting Attorney Joshua Robare, representing DHHS, noted that, while the court was off the record, Hewitt

"was clearly intimidating [respondent] in the hallway standing over her, swearing at her, [and] threatening her" to such a degree that Hewitt was excluded from the courtroom following the recess. I have no doubt the trial court was aware of the gravity of the matter before it; indeed, the court expressed concern about respondent's safety. The court even noted, on the record, that Hewitt was "at risk of danger to everyone here and that's not safe for anyone in this[.]" Guidance from the National Council of Juvenile and Family Court Judges (NCJFCJ) recognizes that, in situations involving intimate partner violence, "[p]erpetrators often use court proceedings or threats of court proceedings . . . to continue control over the victim parent and children" and that "[u]nderstanding the underlying pattern of fear, control, intimidation, and psychological abuse is essential to understanding the impact of domestic violence on victim parents and children." NCJFCJ, *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence* (2011), available at <https://ncjfcj.org/wp-content/uploads/2012/02/checklist-to-promote-accountability_0.pdf> (accessed April 30, 2025) [https://perma.cc/XP95-8NUM].

In sum, respondent's explicitly expressed confusion about the impact of her actions during the hearing; the admission only that TH was exposed to domestic violence, which could be merely consistent with respondent's experience as a victim of intimate-partner violence; the underlying and continued alleged intimidation of respondent, including during this consequential hearing; and the inadequate record on appeal raise questions as to whether respondent's admission was knowing, understanding, and voluntary, MCR 3.971(D)(1), and that we can be certain that any error did not affect the fairness, integrity, or public reputation of the judicial proceedings, *In re Ferranti*, 504 Mich at 29. For these reasons, I would grant the application for leave to appeal to consider further whether respondent is entitled to relief on this basis, and I respectfully dissent from the Court's order denying leave to appeal.